

AMENDED IN ASSEMBLY AUGUST 28, 2003

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE MARCH 28, 2003

## SENATE BILL

**No. 599**

**Introduced by Senator Perata**

February 20, 2003

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An act to add Section 851.90 to the Penal Code, relating to drug diversion.

### LEGISLATIVE COUNSEL'S DIGEST

SB 599, as amended, Perata. Drug diversion: sealed records.

Existing law authorizes the sealing of certain records in connection with the dismissal of charges, as specified.

This bill would provide that whenever a person is diverted pursuant to a drug diversion program administered by a superior court or is admitted to a deferred entry of judgment program for specified drug offenders, the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the ~~arrest record of~~ *records of the arresting agency and related court files and records with respect to the diverted person*, the judge may order ~~the records in the case~~ *those records and files to be sealed, as specified. The bill would provide that the Department of Justice shall continue to be*

able to maintain and disseminate any records or documents received or maintained by it, as authorized by law.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 851.90 is added to the Penal Code, to  
2 read:

3 851.90. (a) (1) Whenever a person is diverted pursuant to a  
4 drug diversion program administered by a superior court pursuant  
5 to Section 1000.5 or is admitted to a deferred entry of judgment  
6 program pursuant to Section 1000, the person successfully  
7 completes the program, and it appears to the judge presiding at the  
8 hearing where the diverted charges are dismissed that the interests  
9 of justice would be served by sealing the ~~arrest record of records~~  
10 ~~of the arresting agency and related court files and records with~~  
11 ~~respect to the diverted person, the judge may order the records in~~  
12 ~~the case those records and files to be sealed, including any record~~  
13 of arrest or detention, upon the written or oral motion of any party  
14 in the case, or upon the court's own motion, and with notice to all  
15 parties in the case. If

16 (2) If the order is made, the clerk of the court shall thereafter  
17 not allow access to any records concerning the case, including the  
18 court file, index, register of actions, or other similar records. If

19 (3) If the order is made, the court shall give a copy of the order  
20 to the defendant and inform the defendant that he or she may  
21 thereafter state that he or she was not arrested for the charge. The

22 (4) The defendant may, except as specified in subdivisions (b)  
23 ~~and (e)~~, (c), (d), and (e), indicate in response to any question  
24 concerning the defendant's prior criminal record that the  
25 defendant was not arrested or granted statutorily authorized drug  
26 diversion or deferred entry of judgment for the offense. Subject

27 (5) Subject to subdivisions (b) ~~and (e)~~, (c), (d), and (e), a record  
28 pertaining to an arrest resulting in the successful completion of a  
29 statutorily authorized drug diversion or deferred entry of judgment  
30 program shall not, without the defendant's permission, be used in  
31 any way that could result in the denial of any employment, benefit,  
32 or certificate.

1     (6) *Sealing orders made pursuant to this subdivision shall not*  
2 *be forwarded to the Department of Justice to be included or*  
3 *notated in the department's manual or electronic fingerprint image*  
4 *or criminal history record systems. Any sealing order made*  
5 *pursuant to this subdivision and received by the Department of*  
6 *Justice need not be processed by the department.*

7     (b) The defendant shall be advised that, regardless of the  
8 defendant's successful completion of a statutorily authorized drug  
9 diversion or deferred entry of judgment program, the arrest upon  
10 which the case was based ~~may~~ *shall* be disclosed by the  
11 Department of Justice in response to any peace officer application  
12 request, and that, notwithstanding subdivision (a), this section  
13 does not relieve the defendant of the obligation to disclose the  
14 arrest in response to any direct question contained in any  
15 questionnaire or application for a position as a peace officer, as  
16 defined in Section 830.

17     (c) The defendant shall be advised that, regardless of the  
18 defendant's successful completion of a statutorily authorized drug  
19 diversion or deferred entry of judgment program, the arrest upon  
20 which the case was based ~~may~~ *shall* be disclosed by the  
21 Department of Justice or the court in which the matter was heard  
22 in response to any subsequent inquiry by the district attorney,  
23 court, probation department, or counsel for the defendant  
24 concerning the defendant's eligibility for any statutorily  
25 authorized drug diversion or deferred entry of judgment program  
26 in the future.

27     (d) *A sealing order made pursuant to this section shall not*  
28 *apply to any record or document received or maintained by the*  
29 *Department of Justice; the court shall advise a defendant that,*  
30 *notwithstanding the issuance of a sealing order pursuant to this*  
31 *section, the Department of Justice shall continue to be able to*  
32 *maintain and disseminate any records or documents received or*  
33 *maintained by the department, as authorized by law.*